

**REMARKS****Declaration**

The Oath or Declaration has been objected to as being defective for failing to adequately identify the specification to which it is directed. Applicant notes that the original Declaration was filed with the original application, as indicated on the transmittal sheet, PTO Form SB/05. Also, the Declaration was an approved PTO Form SB/01A, and stated that the Declaration was directed to the attached application. Therefore, Applicant believes that the Declaration was proper and satisfactory. Applicant also submitted on October 8, 2003 a Supplemental Declaration on PTO Form SB/04 identifying the application by title, filing date, serial number, and amendment. Applicant believes that the original Declaration and the Supplemental Declaration were both proper and satisfactory. Accordingly, Applicant respectfully requests that the objection to the Declaration be withdrawn.

**New Drawings**

Applicant has added new Figures 8-11, and a brief description thereof. These drawings do not add new matter, since they merely show the orientation of a dinner plate in the rack with the tines in an upright position (Figures 8 and 9) and with the tines in a spread position (Figures 10 and 11). The original Specification discusses the placement of dinner plates in the rack at the second objective on page 1, the brief summary on page 2, and the last paragraph beginning on page 4 of the application. Therefore, these new drawings do not constitute new matter.

**35 U.S.C. § 103 Rejections**

Claims 1-20 have been rejected under 35 U.S.C. § 103 as being obvious over the combination of Fiocca and Finola. Applicant respectfully traverses the rejection and requests reconsideration of the claims, as amended.

Independent claim 1 is directed towards a dishwasher rack and requires spaced apart pairs of tines having lower ends in a common horizontal plane and upper ends, "and being free from connections above the lower ends between adjacent tines, so as to receive dinner plates therebetween." Claim 1 also requires that the pairs of tines are independently foldable "in opposite directions" between an upright position and a lowered position.

Independent claim 8 has been amended to be directed towards a combination of a dishwasher rack and a dinner plate, and requires a plurality of tines extending from first and second horizontal legs in an angled orientation, "and being free from obstruction between upper and lower ends of each tines so as to angle the dinner plate to fit within a washing compartment having a height less than the diameter of the plate."

Similarly, independent claim 15 is directed towards a dishwasher rack having first and second sets of tines being rearwardly angled and "free from obstruction between the upper and lower tine ends so as to angle tall objects to fit within a reduced height washing compartment, wherein the height of the objects is greater than the height of the washing compartment." Claim 15 further requires that the upper ends of the tines of one set are spaced progressively farther apart from the tines of the other set "as one or both of the sets of tines are folded from the upright position to the lowered position such that the tall object supported by tines will be tilted progressively farther from a vertical plan as the tines are folded toward the lowered position."

These limitations of claims 1, 8 and 15 are not met by the combination of Fiocca and Finola. More particularly, the Fiocca patent shows tines 38 having horizontally extending connecting bars 26 between the upper and lower ends of the tines 38 in direct contrast to the requirement of each of the independent claims that the tines be free from connections or obstructions between the upper and lower ends. The Examiner asserts that the Finola tines 7 can

be substituted for the Fiocca tines 38. However, there is a complete lack of any objective teaching, suggestion, or motivation to make such a substitution of the Finola tines for the Fiocca tines. It is noted that the tines 38 in the Fiocca tine set 34 have no obstruction between the upper and lower ends, but Fiocca did not see fit to provide similar obstruction free tines in the set 36. Furthermore, it is clear from Figure 1 of Fiocca that tall objects, such as dinner plates, are placed in the lower rack 16, rather than in the upper rack 20 having the tine sets 34, 36. Thus, since the Fiocca upper rack 20 is not intended to receive tall objects, such as dinner plates, as seen in Figure 1, there is no motivation to change or substitute the tines, as suggested by the Examiner. The Examiner's assertion that Fiocca and Finola be combined "in order to enable items such as plates to be retained between adjacent pairs of tines" is unsupported by any clear and particular objective teaching in either of these references. There simply is no reason or basis to combine Fiocca and Finola so the plates can be retained in pairs of modified tines, because Fiocca already teaches a lower dishwasher rack 16 for holding plates.

With respect to the claim 1 limitation of the lower tine ends being in a common horizontal plane, the Examiner's suggested modification of Fiocca to have a rack with a horizontal bottom required by claim 1, is not obvious. Fiocca uses a sloped bottom on the upper rack 22 so as to provide sufficient vertical space in the lower rack 16 for taller objects, such as dinner plates, as is common in the prior art. Therefore, providing a horizontal bottom on the upper rack 22 of Fiocca would reduce functionality of the lower rack 16. Such a modification to Fiocca is not obvious, since it is inconsistent with the purpose, function and teachings of the reference. In re Gorden, 733 F.2d 900, 902 (Fed Cir. 1984).

Claim 1 also requires that tines in each pair be foldable in opposite directions. In Fiocca, only one set of tines 36 is foldable. The Examiner suggests that the teachings of Finola regarding

two sets of foldable tines can be used to modify Fiocca so as to provide two sets of foldable tines. However, the tines in Finola fold in the same direction, rather than in opposite directions, as required by claim 1. As seen in Figure 1 of Finola, the clips B are both oriented with curved surface 14 allowing the sets of tines to fold downwardly to the left from the upright position to the lowered position. Thus, Finola does not teach tines which fold in opposite directions, as required by claim 1. Accordingly, independent claims 1, 8 and 15 distinguish over the cited references so as to be in proper form for allowance. Furthermore, since there is no clear and particular teaching for combining Fiocca and Finola, the combination is improper. For both of these reasons, the 103 rejections of the claims should be withdrawn.

Furthermore, while some of the limitations in independent claims 1, 8 and 15 which distinguish the cited references are functional in nature, the limitations cannot be ignored. It is clear from Federal Circuit case law precedent that every word in a claim must be given meaning. Exxon Chemical Patents, Inc. v. Lubrizol Corp., 64 F.3d 1553, 1557 (Fed. Cir. 1995). Claim limitations defining the subject matter of the invention can never be disregarded. In re Sabatino, 480 F.2d 911, 913 (CCPA 1973). The Patent Office Board of Appeals has also explained that in interpreting claims "the presumption is that every word is meaningful." Sabatino, 480 F.2d at 912. Thus, neither structural nor functional limitations can be read out of the claims.

The dependent claims should be allowable as depending from allowable base claims. Claims 9 and 18 require that the tines are foldable in opposite directions. As discussed above with respect to claim 1, even if Fiocca and Finola are combined, they do not teach such opposite folding of the tines. Therefore, claims 9 and 18 further distinguishes over the cited references.

**New Claims**

New dependent claims 22 and 23 provide that the tines have lower ends in a common horizontal plane similar to the limitation in claim 1. Since the Fiocca upper rack 20 cannot be modified to meet this limitation without destroying at least part of the function of the lower rack 16, claims 22 and 23 further distinguish over the references so as to be allowable.

**Conclusion**

This Amendment accompanies a Request for Continued Examination in the amount of \$770.00 and includes one additional claim in the amount of \$18.00. Therefore, enclosed is our check for \$788.00 for these fees. No other fees or extensions of time are believed to be due in connection with this amendment; however, consider this a request for any extension inadvertently omitted, and charge any additional fees to Deposit Account No. 26-0084.

Respectfully submitted,



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